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In the Supreme Court
OF THE
United States

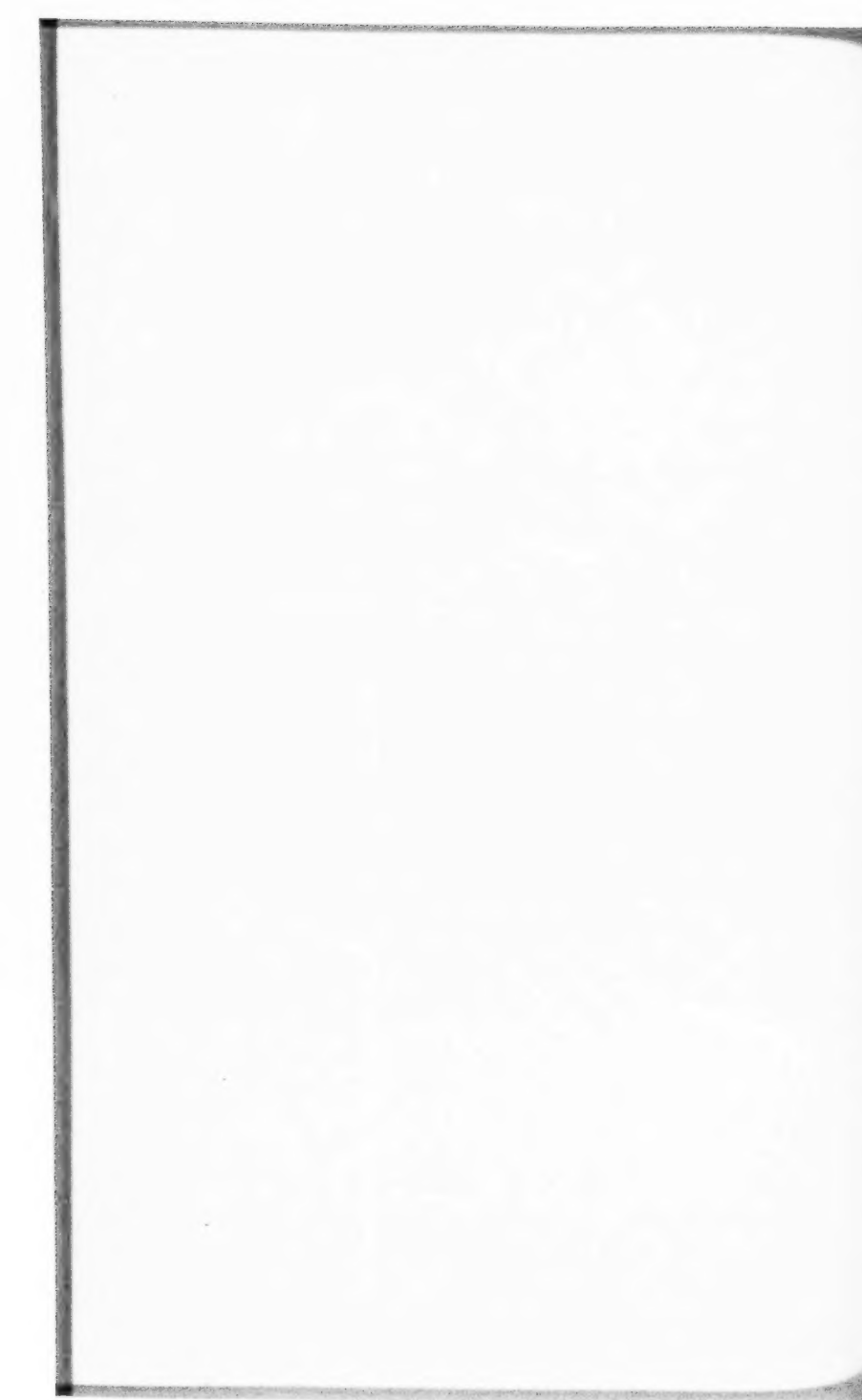
OCTOBER TERM, 1925

No. 224

WILLIAM O'HARA and SVEN TJERSLAND,	}
<i>Petitioners,</i>	
VS.	
LUCKENBACH STEAMSHIP COMPANY,	}
<i>Respondent.</i>	

REPLY BRIEF FOR PETITIONERS.

H. W. HUTTON,
Pacific Building, San Francisco,
Attorney for Petitioners.



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**THE PURPOSE OF THIS STATUTE WAS TO PROMOTE SAFETY
AT SEA, AND NOT TO PREVENT OVERWORK.**

A complete answer to the claim that the statute in question was passed to prevent overwork, is found in the fact that Congress has no power to pass a statute to prevent overwork merely because it is overwork. That is a matter entirely between the employer and employee. Congress is presumed to know and to keep within its powers; it has the power to promote safety at sea; looking to the title of this statute for the intent within the powers of Congress we find it very clearly written therein "*to promote safety at sea.*"

The powers of Congress in a somewhat similar matter are fully discussed in

Wilson v. New, 243 U. S. 332,

in which this Court says in effect, that matters personal must be settled between the employer and employee, but, that Congress has the power to legislate on matters affecting interstate commerce and the public interest therein. Neither interstate commerce or the public interest therein would be affected by the mere fact that a sailor worked an hour or two more a day. If, on the other hand a division of the sailors was necessary to ensure proper safety, interstate commerce and the public interest therein would be affected and the powers of Congress would immediately attach. We must presume that Congress did not intend to exceed, but to keep within its powers in this instance, and that therefore its intent was to promote safety at sea.

What Congress intended is very clear; it defined the watches of the sailors, so that there would be men on deck at all times to prevent disaster and promptly do necessary work if disaster should then happen, all for safety, and also defined the watches of the oilers, water-tenders and firemen also to promote safety, watches in the engine and fire rooms being necessary for the following reasons: Those places are always hot—in warm climates insufferably hot—the work is constant vigilance, the oilers keep the engine bearings lubricated, and have to constantly go around the engine and with their hands, feel the bearings and working parts of the engine to ascertain whether the working parts warm up on account of defective lubri-

cation—a hot bearing means stopping the engine and in a rough sea, that may mean the loss of the vessel. The water-tenders take care of the feed and bilge pumps and keep the water in the boilers at a certain height. If the water gets too low in the boiler, the boiler is ruined and the vessel may need that particular boiler, and the bilges get full of water if the bilge pumps are not attended to. The fireman keeps steam up. Low steam at a time of emergency may mean disaster. Four hours at such work dulls a man's vigilance, and the safety of the vessel depends on constant vigilance in each of the above particulars.

Congress made no provisions for many of the vessel's company. A vessel's complement is made up of:

1. The master.
2. The seamen.

Every person employed on a vessel, except the master and apprentices, are seamen.

Section 4612 Revised Statutes.

The seamen on this vessel were, therefore:

Deck Departments: Four mates, three quartermasters and ten sailors;

Engine Department: Engineers—probably four—oilers, water-tenders and firemen;

Culinary Department: Stewards, cooks and waiters.

Except as their safety was concerned, it would make no difference to the mates, quartermasters, engineers, stewards, cooks, waiters, oilers, firemen and water-tenders, whether a sailor was overworked or not, and it would make no difference to either of the sailors

whether the firemen, oilers and water-tenders were overworked or not. Still the statute reads as to the sailors:

“the sailors shall, while at sea, be divided into at least two * * * watches * * *.”

And also reads:

“Whenever the master of any vessel shall fail to comply with this section, the *seamen*”—

That is, the mates, quartermasters, engineers, oilers, water-tenders, firemen, stewards, cooks and waiters, who were in no way interested in whether the sailors were overworked or not, except as their safety might be endangered:

—“shall be entitled to discharge from such vessel and to receive the wages earned.”

Nor were the sailors, or any of the groups on the vessel other than the firemen, oilers and water-tenders, interested other than as their safety was concerned, whether the oilers, firemen and water-tenders were placed on not less than three watches or not. Still they all would be entitled to their discharge and wages if that was not done.

It is not reasonable that if overwork was the purpose of Congress, it would have picked out the sailors, oilers, firemen and water-tenders and left everyone else on the vessel unprovided for in that particular.

The fact that Congress did not legislate for all on board shows clearly that overwork was not the issue before it.

The fact is that the vessel would get more hours work per day by putting the sailors on not less than

two watches than it did on the "Kalashi" watch plan, as follows:

The seven sailors on this vessel worked 56 hours per day under the plan followed. On the two watch plan provided by the statute the working day would commence at 4 A. M., one hour then being taken up for coffee, from 5 A. M. There would be four men working washing decks which is always done at that time on the two watch plan, and one man on the lookout. Four hours would thus be obtained. At 6 A. M. the man on the lookout would join them and 10 hours work would be obtained up to 8 A. M., when the next watch came on deck. From 8 A. M. there would be five men working or a total of 20 hours, and from noon to 6 P. M.—4 to 6 P. M. being what is called a dog watch—there would be 30 hours, the total being 64 hours as against 56.

And we respectfully submit, that the following matter contained in the opinion of the District Court herein, and found on pages 10 and 11 of respondent's brief herein, is not a matter for the concern of a Court.

"If one-half or one-third of the crew must be assigned to duty at night, it is quite apparent that a majority of those assigned will have little or nothing to do."

The statute is clear on the subject, and it was for Congress to determine what should be done.

We also respectfully say that the Circuit Court of Appeals erred herein, when it decided as follows (page 12 of Respondent's Brief):

"The purpose of Congress was obviously to provide for the safety of the ship in the selection of

qualified quartermasters and any men for the lookout, and also to prevent overwork."

Section 2 of the Act.

The section involved herein does not mention either quartermasters or lookout or "qualifications". The qualifications are provided for by Section 38 of the same Act. 38 Stat. at Large 1169, requiring the Board of Local Inspectors to examine seamen and issue them certificates, and that on the fourth year after the passage of the Act, at least sixty-five per cent of the deck crew, exclusive of licensed officers and apprentices, should be "of rating not less than able seamen", and such able seamen under that section must have been examined as aforesaid, and have a certificate to that effect. So it is very clear that Congress was not considering qualifications of either quartermasters or sailors when it passed the bill.

The bill first came before the Committee on the Merchant Marine and Fisheries, as House Bill 11372, on Tuesday, December 14, 1911. As to Mr. Furuseth's views on the purpose of the bill, and he took the laboring oar all the way through, we quote the following (page 12 of hearing before that committee):

"MR. FURUSETH. The bill itself has three main features. The first is to improve the condition of the seamen in all the branches of the service so as to further induce the American boy to go to sea, and the American man to remain at sea when he once has gone there—a condition which does not now exist. The second feature of the bill is *with a view of improving safety of life and property at sea. We hold that the most important means to that end is an efficient crew.*

Thirdly, this subject deals with crews who cannot understand the English language only."

On page 56, we find:

"In my last article I promised to deal separately with the more important features of the seamen's bill. Given a good vessel, proper boats, proper davits to lower those boats, and skilled men to handle both vessels and boats, there is nothing more important than watch-and-watch.

Watch-and-watch, in the language of seamen, means that the crew are divided into two equal parts, speaking of the deck crew, and into three equal parts speaking of the engine room crew. The watches are on deck or in the engine room on duty alternately. They steer, keep lookout, keep the lead going, and do such other things as are needed for the safety of the vessel. They keep everything clean and in order, the main point, however, *is that they are there to keep things safe.* The Arab is said to have a maxim that 'nobody meets a friend in the desert.' It is equally true that 'No vessel meets a friend on the ocean.'

There is no telling when you may meet a vessel, day or night, and these meetings are full of danger, because they mean collisions. No matter how careful the officers and men of one vessel may be, the other vessel may have men who are careless, undisciplined, or tired out by work and lack of sleep until they fail from sheer exhaustion. Be is remembered that it takes two to avoid a collision.

* * * * *

Vessels are kept close in to save coal and to be more comfortable, and that is right, but without a good lookout and an attentive helmsman, it is dangerous. Then there is the failure to see another vessel in time; there is a collision, and life and property are lost. At such time the 'Kalashi' watch shows what it really is. One man at the wheel, and one man at the lookout, perhaps one more man on deck somewhere. The men are in their bunks asleep when she hits the shore or the other vessel. Every minute means more at this

time than hours later. The men come on deck, they are sluggish with sleep, they come from the light in the fore-castle out into a different light or darkness on deck. It takes some time to come out; it takes more time to get accustomed to the different lights, or darkness on deck; they cannot act with the readiness and precision needed in such cases. The most important and valuable time is lost, and so, probably are a number of lives. If one-half the crew were on deck at the time they would go ahead and do what is needed, and when the watch below comes up they are led by the men on deck. The work goes promptly forward and the chances of rescue are much greater.

By the time the watch below is on deck the boats are cast loose and ready to be put over the side; such is the necessary action. But aside from that, the passengers come on deck and finding the men cool and about their business, become themselves more cool and confident. There is order, action, confidence, and therefore a much improved chance of getting out of the most desperate scrape.

With but the lookout, the helmsman and the officer on deck when the trouble begins there is a scurry to get the men out. The master is shouting orders that are not observed because there is nobody to obey them. The men come on deck stupid from sleep and the change of light. Some time passes before the proper work begins to move; there is excitement, which communicates itself to the passengers, who then try to seize the boats, and the result may be a free for all fight before any real rescue work can be done."

The report of the Committee on the Bill was made May 2, 1912, and is Report No. 645, 62nd Congress, 2nd Session, to accompany H. R. 23673, and commences:

"The committee on the Merchant Marine and Fisheries, to which was referred the bill (H. R. 23673) to abolish the involuntary servitude imposed upon seamen in the merchant marine of the United States while in foreign ports and the involuntary servitude imposed upon the seamen of the merchant marine of foreign countries while in the ports of the United States, to prevent unskilled manning of American vessels, to encourage the training of boys in the American merchant marine, *for the further protection of life at sea*, and to amend the laws relative to seamen, submits the following report, and recommend that the bill do pass with the following amendments;"

It will be observed there is not a word about overwork in that language.

The number of the bill had been changed while being considered by the Committee, from 11372 to 23673, and Section 2, in issue herein, was then a part of Section 1, but became Section 2 in the Senate, by reason of the report of the Department of Commerce and Labor, of date, November 22, 1912. At the bottom of page 5 and top of page 6 of that report, a separate section is suggested for the reason,

"To make clear their scope, they should be in one or more distinct sections, independent of section 4516, which has restricted application, although 'at sea' would include the great lakes."

Section 2, herein considered, being a part of Section 4516 Revised Statutes in the bills, as it came from the House of Representatives.

The first hearing before the Senate Subcommittee of the Committee on Commerce, was had on December 2, 1912, and on December 4, 1912, Mr. Furuseth

stated before that Committee as follows (page 166 of the proceedings of that Committee):

“But that is not the worst phase of this thing. The very worst phase of it is this: the question of safety to the travelling public and to us. As far as seamen are concerned, I presume we have as many friends down in the warm place as any of you, and it will not make much difference. But there are a good many more of you people on shore travel than there are of us, and you stand the chances of getting drowned just as much as we do. And I want to say to you gentlemen this: that when the ‘*Columbia*’ went down, she went down within five minutes. The men were not on deck. They did not have even a chance to cut away the boats when she went down. She went down at once, and she drowned 86 men, and the seamen on board of that vessel managed to get out and some boats were cut away and some tore themselves adrift. They were laying some bottom up and some on even keel. The men climbed on board these boats, emptied them out, and began saving life there. If those men had been on deck, as they should have been, and as they would be if it was not for your limited liability law, and your safety from risk, and your insurance—if it was not for that you would never go to sea with the kind of crews you have now. But as it is now, the men stay there in the fore-castle; they are undressed; it takes seven minutes at the very least, to get out, and in some fore-castles it takes ten minutes, under the circumstances. A man comes out from one kind of a light, and he is useless when he comes out; everything is in a hurly-burly on deck. One man shouts and another man shouts, and nobody obeys. If the watch is on deck, where they belong, the moment there is any trouble they are ready to carry out the master’s or the mate’s order. When the crew comes out of the fore-castle they are led by the men who are already out. That is safety of life, and I do not care who will say to the contrary. There is not

a seaman standing on his own bottom, clean-hearted and without a collar on, who can undertake to dispute the truth of my statement here now."

Mr. Furuseth furnished a written statement to the Committee of the House on "Kalashi" watches. It is to be found on page 57 of the proceedings of that Committee, and is in substance the same as the "Extension of the Remarks" of the Honorable John E. Raker, a part of which is printed in our brief. The remarks of Mr. Raker, having been made by him before the House of Representatives, July 12, 1912.

Mr. Furuseth explained the meaning of the word "Kalashi" at different times as being a watch that originally existed among the Kalashis, or the Hindu seamen, along the coast of India, where the men worked all day and were subject to call at any time during the night.

It is the duty of the officer of the watch to prevent men from "picking out a warm place to sleep." The presumption is they will not do so also.

Keeping a vessel clean is just as much a part of the "sailing and management" of a vessel as anything else that is done on her, and having men at hand in case of disaster is certainly a part of her "sailing and management."

The testimony of the master of the vessel (Tr. p. 32) shows conclusively that petitioners claimed their discharge on account of the failure to have the sailors stand watch-and-watch.

The testimony is clear, also, that there was a period of one-half hour twice each night, when there was no lookout.

The master's testimony on the subject is evasive (Tr. p. 33). He says, "To my knowledge." That means he does not know. He would not be likely to know, as the officer of the deck has charge of that.

As to the following language on page 8 of respondent's brief:

"1. Establishing 'watch and watch' at sea and prohibiting unnecessary work on Sundays and holidays in port, thus insuring the amount of rest necessary to the highest state of efficiency * * *."

It seems very clear from its reading, that the words, "thus insuring the amount of rest necessary to the highest state of efficiency.",

refer to the following previous language:

"and prohibiting unnecessary work on Sundays and holidays in port.",

and do not refer to "watch and watch" at sea.

But if it did, the master violated the law as he testified (Tr. p. 27) that if he had followed the law the men would not be doing anything during the night time, and the language of Messrs. Furuseth, Fraizer and MacArthur, is:

"necessary to the highest state of efficiency."

Showing it was "efficiency", not "overwork" they had in mind, and efficiency is necessary to safety.

The "Titanic" was lost April 14, 1912, with a loss of 1517 lives out of 2,223 on board. An investigation

of the matter was made and reported to the Senate May 28, 1912, the report consisting of 82 pages. On the same day Senator Rayner of Maryland, addressed the Senate and in his remarks we find the following:

“Mr. President, we must change the admiralty and navigation laws of this country. They consist of an incongruous collection of antiquated statutes which should be repealed and reenacted.

“Mr. President, I desire to ask the attention of the Senate briefly to the subject matter indicated in my notice in reference to the disaster to the ‘Titanic’.

I shall not bring to your attention the harrowing details of this overwhelming calamity, but my purpose is to ascertain what lessons this disaster teaches us and what legislation, if possible, can be framed in order to avoid its recurrence.

Mr. President, we must change the admiralty and navigation laws of this country * * *.”

The whole speech is an appeal for greater safety at sea, and Congress thereafter spent about three years and produced the bill of which Section 2 in issue herein is a part, and the whole scheme was practically the outgrowth of that disaster.

Safety is the keynote all through the hearings and discussions, and we have failed to find any statement that overwork was under consideration at any time. There may have been an idle remark here and there, as such remarks sometimes occur in any proceeding, no one talks with mathematical precisions, but nowhere can we find anything but that the main purpose of Congress was to legislate for safety at sea.

In conclusion it may be asked, how can a statute which if followed compels a sailor to work 12 hours

per day, have been passed to prevent overwork when otherwise he might only be working 8 hours per day, and why are sailors trying to have 12 hours work per day established as against 8 hours per day? It shows clearly that safety is what is in issue herein, not overwork, for a seaman's life is of as much value to him as is the life of any other person, to that person.

Dated, San Francisco,
November 2, 1925.

Respectfully submitted,

H. W. HUTTON,

Attorney for Petitioners.